REMARKS

Claims 1-22 are pending in the present application.

This Amendment is in response to the Office Action mailed May 27, 2009. In the Office Action, the Examiner rejected claim 22 under 35 U.S.C. §112, second paragraph; claims 1, 6, 8-11, 13, 15-20, and 22 on the ground of nonstatutory obviousness-type double patenting; and claims 1-22 under 35 U.S.C. §103(a). Reconsideration in light of the remarks made herein is respectfully requested.

Double Patenting

The Examiner rejects claims 1, 6, 8-11, 13, 15-20, and 22 under the judicially created doctrine of the obviousness-type double patenting of claims 4, 9, 12, 14, 24-26, 31-32, 39-40, 45-46, 51-52, 58-60, 66, and 68 in U.S. Patent No. 7,127619. The Examiner asserts that although the designs are not identical, they are not patentably distinct from each other because the claims of the instant application are anticipated by the claims in the U.S. Patent No. 7,127,619 in that claims 4, 9, 12, 14, 24-26, 31-32, 39-40, 45-46, 51-52, 58-60, 66, and 68 in U.S. Patent No. 7,127,619 contain all of the limitation of the instant application.

Applicant respectfully disagree with the Examiner's allegation that the claims in U.S. Patent No. 7,127,619 contain all the limitations of the instant application. For instance, independent claims 1, 6, 11, 15, and 22 of the present invention recites:

> 1. "A method for providing content from a head-end to a digital device, comprising:
>
> producing an Internet Protocol (IP) datagram including an IP header and a body that includes a plurality of packets in a Moving Picture Experts Group (MPEG) format, the plurality of packets including a first packet and a second packet preceding the first packet, the first packet including a first packet identifier to indicate a type of data stored in a payload of the first packet and a second packet including a secondary packet identifier to indicate that the second packet includes data that is (i) duplicative of the data contained in the payload of the first packet and (ii) encrypted differently than the data contained in the payload of the first packet, and to cause the digital device to discard the data contained in the first packet; and
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> transmitting the IP datagram from the head-end." *Emphasis added.*
>
> 6. "A method for receiving content from a head-end by a digital device, comprising:

receiving an Internet Protocol (IP) datagram including an IP header and a body segmented including a plurality of packets in a Moving Picture Experts Group (MPEG) format, the plurality of packets comprises (i) a first packet of the plurality of packets including a payload having content and a header that comprises a first packet identifier to indicate a type of the content contained in the payload of the first packet, and (ii) a second packet of the plurality of packets including a payload and a secondary packet identifier to indicate that the payload of the second packet includes content duplicative of the content contained in the payload of the first packet;

recovering the duplicative content contained in the payload of the second packet; and

disregarding the content contained in the payload of the first packet." *Emphasis added.*

11.   "A software packet filter program embodied in a machine readable medium and executed by a processor, the software program comprising:

a first program block to extract a plurality of packets from an incoming Internet Protocol (IP) datagram, the plurality of packets comprises (i) a first packet of the plurality of packets including a payload having content and a header that comprises a first packet identifier, and (ii) a second packet of the plurality of packets preceding the first packet, the second packet including a payload and a secondary packet identifier;

a second program block to determine that the second packet identifier identifies the content contained within the payload of the second packet is duplicative of the content contained in the payload of the first packet; and

a third program block to recover the duplicative content contained in the payload of the second packet and disregard the content contained in the payload of the first packet." *Emphasis added.*

15.   "A method for receiving content from a head-end by a digital device, comprising:

receiving an Internet Protocol (IP) datagram including a plurality of Packetized Elementary Stream (PES) packets, the plurality of PES packets comprises (i) a first PES packet of the plurality of PES packets including a first packet identifier (PID1) to indicate a type of content contained in the PES packet, and (ii) a second PES packet of the plurality of PES packets including a secondary packet identifier to indicate that the second PES packet includes content duplicative of the content contained in the first PES packet;

recovering the duplicative content contained in the second PES packet; and

disregarding the content contained in the first PES packet." *Emphasis added.*

22.   "A digital device, comprising:

means for receiving an Internet Protocol (IP) datagram including a plurality of packets, the plurality of packets comprises (i) a first packet including

a first packet identifier to indicate a type of content contained in the first packet, and (ii) <u>a second packet including a secondary packet identifier to indicate that the second packet includes content that is identical to the content contained in the first packet and encrypted differently from the content contained in the first packet</u>;
means for recovering the duplicative content contained in the second packet; and
means for disregarding the content contained in the first packet."
Emphasis added.

Applicant submits that there is no mention in claims 4, 9, 12, 14, 24-26, 31-32, 39-40, 45-46, 51-52, 58-60, 66, and 68 of U.S. Patent No. 7,127619 which discloses, at least, <u>a secondary packet identifier to indicate that the second packet includes data that is (i) duplicative of the data contained in the payload of the first packet and (ii) encrypted differently than the data contained in the payload of the first packet,</u> as delineated in the claims.

While Applicant disagrees with the Examiner's double patenting rejection, Applicant has submitted a terminal disclaimer to obviate the obviousness-type double patenting rejection. Applicant respectfully requests that the Examiner withdraw the obviousness-type double patenting rejection of claims 1, 6, 8-11, 13, 15-20, and 22.

Rejection Under 35 U.S.C. § 112

In the Office Action, the Examiner rejected claim 22 under 35 U.S.C. §112, second paragraph. The Examiner alleges that the limitation "encrypted differently than the data contained in the payload of the first packet" because the data in the payload of the first packet is not encrypted (<u>Office Action</u>, page 3).

Applicant respectfully disagrees and respectfully directs the Examiner's attention to the Specification, page 72-73, which state:

"With respect to FIGURE 19E, a third embodiment for IP datagram 1100 is shown. IP datagram 1100 comprises the IP header 1110 and the body 1120, which contains one or more MPEG packets 1170_1-1170_N (N>1). More specifically, as shown, the IP datagram 1100 comprises MPEG packets 11701-11706 of which <u>one MPEG packet 1170_3 utilizes a secondary PID (referred to as "PID2"). PID2 denotes that the MPEG packet 1170_3 is associated with duplicative A/V content. More specifically, for this IP datagram, secondary PIDs are used to tag packets that carry duplicative A/V content which, for some embodiments, may be due caused by the A/V content being encrypted using a different encryption method. As an example, MPEG packet 1170_2 contains the same content as MPEG packet 1170_3, but is encrypted using a different key or algorithm.</u> This enables more efficient multicasting of the content. The packet filter

identifies the secondary PID (operating as a tag for the MPEG packet 11703), provides the duplicative content to the descrambler and discards the content associated with the MPEG packet 11704 associated with the primary PID." (See Specification, pages 72-73, Figure 19E, for further details). *Emphasis Added.*

Accordingly, Applicant respectfully submits that the language "encrypted differently than the data contained in the payload of the first packet" is <u>not</u> unclear.

Therefore, Applicant respectfully requests the rejection under 35 U.S.C. §112 be withdrawn.

Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1-22 under 35 U.S.C. §103(a) as being unpatentable over U.S. Publication No. 2002/0131426 issued to Amit et al. ("<u>Amit</u>") in view of U.S. Patent No. 6,976,166 issued to Herley et al. ("<u>Herley</u>"). Applicant respectfully traverses the rejection and submits that the Examiner has not met the burden of establishing a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, certain basic criteria must be met. For instance, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. <u>MPEP §2143</u>. Applicant respectfully submits that the combined teachings do not address each and every limitation, and thus no *prima facie* case of obviousness has been established.

Furthermore, the Supreme Court in <u>Graham v. John Deere</u>, 383 U.S. 1, 148 USPQ 459 (1966), stated: "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined." <u>MPEP 2141</u>. In <u>KSR International Co. vs. Teleflex, Inc.</u>, 127 S.Ct. 1727 (2007) (Kennedy, J.), the Court explained that "[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order *to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.*" *Emphasis Added.* The Court further required that an explicit analysis for this reason

must be made. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR, 127 S.Ct. at 1741, quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006).

In the instant case, Applicant respectfully submits that the combined teachings of the cited prior art references do not teach or suggest all the claim limitations. Furthermore, Applicant respectfully submits that there are significant differences between the cited references and the claimed invention and thus, there is no apparent reason to combine the known elements in the manner as claimed. No *prima facie* case of obviousness has been established.

Amit and Herley, taken alone or in any combination, do not disclose or render obvious, at least, the following limitations: (1) "the first packet including a first packet identifier to indicate a type of data stored in a payload of the first packet;" and (2) "a second packet including a secondary packet identifier to indicate that the second packet includes data that is (i) duplicative of the data contained in the payload of the first packet," which are delineated in independent claims 1, 6, 11, 15, and 22. Furthermore, neither Amit nor Herley discloses or renders obvious the limitation that "the second packet including a secondary packet identifier to indicate that the second packet includes data that is… (ii) encrypted differently than the data contained in the payload of the first packet," which are delineated in independent claims 1 and 22.

Amit merely discloses a broadcast (i.e. packets are transmitted to all the stations) and a multicast (i.e. packets are transmitted to more than one station but not all the stations) scheduling schemes. In these schemes, broadcast/multicast packets may need to be transmitted in more than one carrier, when legacy cable modems 16 are present. Multi-carrier SVC cable modems 158 need to forward only one replica of the packet, and discard the rest. An option is to enumerate the packets, e.g., assign a serial number to each broadcast/multicast packet (Amit, par. [0072]). Further, when there is no single carrier that is common to all the relevant stations, the packet is transmitted in multiple copies over a few carriers and multiple copies of the same packet should have the same serial number (Amit, par. [0074]-[0075]).

In contrast, claims 1, 6, 11, 15, and 22 delineate "the first packet including a first packet identifier to indicate a type of data stored in a payload of the first packet." *Emphasis Added.* In Amit, the packets are merely assigned a serial number. Since the serial number does not indicate

a "type of data stored in the payload of the first packet," there is no teaching in Amit of "the first packet including a first packet identifier" as delineated in the claims.

In addition, Amit merely discloses that the SVC cable modem 158 forwards the first appearance of each packet, and discards the rest (Amit, par. [0072]). Even assuming that the first appearance of the packet is the first packet and the second appearance of the packet is the second packet, Applicant respectfully submits that Amit fails to teach "a second packet including a secondary packet identifier to indicate that the second packet includes data that is (i) duplicative of the data contained in the payload of the first packet," as delineated in claims 1, 6, 11, 15, and 22. *Emphasis Added.* As discussed above, all packets being broadcast or multicast are assigned a serial number. In other words, the packets are merely enumerated using the serial numbers. Accordingly, the serial number assigned to the second appearance of the packet does not indicate that the second appearance of the packet includes data that is "duplicative of the data contained in the payload of the first packet," allegedly the first appearance of the packet. Thus, the serial number assigned to the second appearance of the packet cannot correspond to "the second packet including a secondary packet identifier" as delineated in the claims.

Furthermore, claims 1 and 22 recite "the second packet including a secondary packet identifier to indicate that the second packet includes data that is… (ii) encrypted differently than the data contained in the payload of the first packet." *Emphasis Added.* As discussed above, in Amit, the packets are merely being enumerated using assigned serial numbers. The serial number assigned to the second appearance of the packet, allegedly the second packet, does not indicate that the second appearance of the packet is encrypted differently than the data contained in the payload of the first appearance of the packet, allegedly the first packet.

Moreover, the Examiner admits that "Amit does not disclose the second packet includes data that is encrypted differently than the data contained in the payload of the first packet" (Office Action, page 5). However, the Examiner alleges that Herley discloses this element of the claims. Applicant respectfully disagrees.

Herley merely discloses that the information file can be split into any number of files, any one or more of which can be encrypted using the same or different encryption (Herley, col. 3, lines 24-29). Applicant respectfully submits that the claims 1 and 22 recite "the second packet including a secondary packet identifier to indicate that the second packet includes data that is… (ii) encrypted differently than the data contained in the payload of the first packet." *Emphasis*

Added. Even assuming that an information file is split into a first and second file which are encrypted using different encryption, there is no teaching of a <u>secondary packet identifier</u> to indicate that the second file is encrypted differently from the first file.

Applicant further submits that a *prima facie* case of obviousness has not been established for dependent claims 2-5, 7-10, 12-14, and 16-21. However, based on the dependency of claims 2-5, 7-10, 12-14, and 16-21 on independent claims 1, 6, 11, 15, and 22, respectively, which are believed to be in condition for allowance, Applicant respectfully submits that claims 2-5, 7-10, 12-14, and 16-21 are believed to be allowable for at least the reasons set forth above.

Therefore, Applicant believes that independent claims 1, 6, 11, 15, and 22 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicant respectfully requests the rejection under 35 U.S.C. §103(a) be withdrawn.

Conclusion

Applicant respectfully requests that the Examiner reconsider the rejections and issue a timely Notice of Allowance.

Respectfully submitted,

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